

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JEFFERSON-PILOT INSURANCE
COMPANY,

Plaintiff,

vs.

No. C-1-02-479

CHRISTOPHER L. KEARNEY,

Defendant.

VIDEOTAPED DEPOSITION OF DAVID
NEWKIRK, a Witness, taken on behalf of the
Defendant before Mary Lynn Cushing, CSR, CCR No.
1077 pursuant to Notice on the 13th day of June,
2007, at the Law Offices of Stinson, Morrison,
Hecker, LLP, 1201 Walnut Street, Suite 2900,
Kansas City, Missouri, 64106.

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APPEARANCES

1
2
3 Appearing for Jefferson-Pilot
4 Insurance Company and Disability Management
5 Services was Mr. John E. Meagher of Shutts &
6 Bowen, LLP., 1500 Miami Center, 210 South
7 Biscayne Boulevard, Miami, Florida, 33131.
8 Appearing telephonically for
9 Jefferson-Pilot Insurance Company was Ms.
10 Stephanie T. Farabow, 826 North Elm Street,
11 Greensboro, North Carolina, 27401.
12 Appearing telephonically for
13 Disability Management Services was Mr. Adam
14 Formus, Legal Counsel, of Disability Management
15 Services, 1391 Main Street, Springfield,
16 Massachusetts, 01103.
17 Appearing for Mr. David Newkirk was
18 Mr. Bruce E. Baty of Stinson, Morrison, Hecker,
19 LLP, 1201 Walnut Street, Suite 2900, Kansas
20 City, Missouri, 64106.
21 Appearing for the Defendant was Mr.
22 Michael A. Roberts of Graydon, Head & Ritchey,
23 LLP, 1900 Fifth Third Center, 511 Walnut Street,
24 Cincinnati, Ohio, 45202.
25

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1 Also present was Jeremy Martin,
2 Videographer, of Metropolitan Court Reporters,
3 Inc., 9200 Indian Creek Parkway, Suite 205,
4 Overland Park, Kansas, 66210.
5

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7 WITNESS: PAGE:
8 WILLIAM DEMPSEY
9 Examination by Mr. Roberts 4
10
11
12 (No Exhibits were marked.)
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1 (Deposition commenced at 3:30 PM)
2 MR. MARTIN: This is the
3 videotaped deposition of David Newkirk, case No.
4 C-1-02-479. Today's date is June 13th of 2007.
5 Time is now 3:34. We're going on the record.
6 Counsel, would you please state your
7 appearances?
8 MR. MEAGHER: John Meagher for
9 Jefferson-Pilot and Disability Management
10 Services. Also present is Adam Formus of
11 Disability Management Services.
12 MR. BATY: Bruce Baty with
13 Stinson, Morrison, Hecker representing the
14 witness Mr. Newkirk.
15 MR. ROBERTS: And Mike Roberts, I
16 represent the defendant Chris Kearney.
17 MR. MARTIN: And on the phone?
18 MR. MEAGHER: Adam Formus I said.
19 MR. FORMUS: Yes.
20 MR. MARTIN: Would you please
21 swear in the witness.
22 DAVID NEWKIRK,
23 being first duly sworn, testified under oath as
24 follows:
25

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1 MR. MEAGHER: Again. As with the
2 earlier deposition of Mr. Dempsey, we object
3 that notice of a videotape was not properly
4 given, so we object on that basis.
5 MR. ROBERTS: I don't think I
6 sent a notice of this deposition.
7 MR. MEAGHER: Well, then that's
8 the problem.
9 MR. ROBERTS: Can we proceed?
10 MR. MEAGHER: Yes.
11 MR. ROBERTS: Thank you.
12 EXAMINATION
13 BY MR. ROBERTS:
14 Q. Sir, can you state your name for the
15 record, please?
16 A. David Newkirk.
17 Q. And where do you reside Mr. Newkirk?
18 A. I reside in the Shawnee, Kansas area.
19 Q. And how old are you, sir?
20 A. I am 48.
21 Q. Are you a lawyer?
22 A. Yes, I am.
23 Q. What year did you achieve your law
24 degree?
25 A. 1987.

<p style="text-align: right;">Page 6</p> <p>1 Q. How are you presently employed?</p> <p>2 A. I am employed with Employers</p> <p>3 Reinsurance Corporation.</p> <p>4 Q. Is that the GE subsidiary?</p> <p>5 A. No, it is not a GE subsidiary.</p> <p>6 Q. That's a subsidiary of Swiss Re?</p> <p>7 A. Yes, it is.</p> <p>8 Q. How long have you been employed by an</p> <p>9 entity that's a subsidiary of Swiss Re?</p> <p>10 A. Approximately a year give or take.</p> <p>11 Q. Prior to that?</p> <p>12 A. With the same company owned by General</p> <p>13 Electric.</p> <p>14 Q. How long had you been employed by that</p> <p>15 company when it was owned by General Electric?</p> <p>16 Let me state it another way. When did you begin</p> <p>17 your employment at Employers Reinsurance</p> <p>18 Corporation?</p> <p>19 A. 1990.</p> <p>20 Q. Let's refer to that as ERC, okay? You</p> <p>21 need to answer audibly.</p> <p>22 A. I'm sorry?</p> <p>23 Q. You need to answer out loud?</p> <p>24 A. Certainly.</p> <p>25 Q. And there's another entity called ERAC</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Which is litigation?</p> <p>2 A. It can be litigation.</p> <p>3 Q. How did you come to be employed at ERC?</p> <p>4 A. I had met some of the people that</p> <p>5 worked for an ERC subsidiary called National</p> <p>6 Fidelity Life. They seemed like good people.</p> <p>7 It seemed like a good working environment. It</p> <p>8 gave me the chance to focus in detail on</p> <p>9 representing one client, which was an</p> <p>10 opportunity that was of interest to me. And so</p> <p>11 I went over.</p> <p>12 Q. What did you understand the position to</p> <p>13 be at the time you took that job?</p> <p>14 A. Claims counsel.</p> <p>15 Q. And what were the responsibilities of a</p> <p>16 claims counsel at ERC?</p> <p>17 A. Claims counsel will do a couple of</p> <p>18 things. A claims counsel would act as a</p> <p>19 consultant in terms of assisting the clients of</p> <p>20 ERC. Claims counsel would also provide legal</p> <p>21 advice if the claims counsel was an attorney,</p> <p>22 which I was, to the corporation.</p> <p>23 Q. What types of claims would be within</p> <p>24 your realm of responsibility?</p> <p>25 A. It has varied over the years.</p>
<p style="text-align: right;">Page 7</p> <p>1 and you're mindful of what that is?</p> <p>2 A. That's correct.</p> <p>3 Q. Can you tell the jury what the</p> <p>4 difference between ERC and ERAC is?</p> <p>5 A. They are two different legal entities.</p> <p>6 Employers Reinsurance Corporation is a Missouri</p> <p>7 insurer. ERAC is a Kansas domiciled insurer.</p> <p>8 Q. And are they affiliated today?</p> <p>9 A. They are not affiliated today.</p> <p>10 Q. One is a subsidiary of General Electric</p> <p>11 and the other is a subsidiary of Swiss Re?</p> <p>12 A. To the best of my understanding that is</p> <p>13 correct.</p> <p>14 Q. And prior to a year ago, they were both</p> <p>15 subsidiaries of General Electric?</p> <p>16 A. That is correct.</p> <p>17 Q. Before coming to ERC, how were you</p> <p>18 employed from the year you obtained your law</p> <p>19 degree to 1990?</p> <p>20 A. I was employed by the Morrison and</p> <p>21 Hecker law firm from 1987 to 1990.</p> <p>22 Q. And that's where we are today?</p> <p>23 A. A successor to that firm, yes.</p> <p>24 Q. Was your practice here in litigation?</p> <p>25 A. My practice area was insurance defense.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. From '90 to '98 what types of claims?</p> <p>2 A. From 1990 to 1993 primarily surety and</p> <p>3 fidelity. From 1993 to approximately 1999</p> <p>4 accident and health, life, disability, long term</p> <p>5 care.</p> <p>6 Q. And after that?</p> <p>7 A. Hospital, medical malpractice.</p> <p>8 Q. That's '99 through today?</p> <p>9 A. No. That's '99 through approximately</p> <p>10 2000.</p> <p>11 Q. And bring me forward?</p> <p>12 A. From 2000 on I left the claims</p> <p>13 department, became a full-time person within the</p> <p>14 legal department. Assumed the role of general</p> <p>15 counsel for what was then the Health Care</p> <p>16 Division. And became counsel and lead lawyer</p> <p>17 for what is now the Commercial Insurance</p> <p>18 Division.</p> <p>19 Q. Is that the position you hold today?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Was there a period of time that you had</p> <p>22 some responsibility of some sort for a claim of</p> <p>23 Chris Kearney?</p> <p>24 A. Yes, there was.</p> <p>25 Q. Do you recall what period of time that</p>

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1 was?

2 **A. No, I don't.**

3 Q. Have you reviewed any documents in

4 preparation for today's deposition?

5 **A. I reviewed the one page document that I**

6 **found and produced. That's the only document**

7 **that I reviewed.**

8 Q. That's the last document of Exhibit 2,

9 is that right?

10 **A. Yes, that's correct.**

11 Q. Did you author that document?

12 **A. Yes, I did.**

13 Q. What would be the purpose for you

14 creating this document?

15 **A. This was information that we passed on**

16 **to Jefferson-Pilot during the course of a file**

17 **review that we had at Jefferson-Pilot. We**

18 **created this for use at Jefferson-Pilot and that**

19 **would be the primary purpose.**

20 Q. Do you recall personally being engaged

21 in a file review at Jefferson-Pilot?

22 **A. I recall going to Jefferson-Pilot.**

23 Q. On how many occasions would you go to

24 Jefferson-Pilot to do file reviews?

25 **A. I don't recall.**

Page 11

1 Q. Did you go on an annual basis or more

2 frequently?

3 **A. I don't recall.**

4 Q. Or less frequently?

5 **A. I don't recall.**

6 Q. But you're certain this particular page

7 was generated as a result of your actual

8 physical visit to North Carolina at

9 Jefferson-Pilot reviewing files?

10 **A. Yes, I am.**

11 Q. How can you be so certain?

12 **A. The material was located in a file of**

13 **other Jefferson-Pilot claimants and was material**

14 **that would have been produced to**

15 **Jefferson-Pilot.**

16 Q. I'm not sure I understood you. What

17 material are you talking about?

18 **A. This was part of a group of file**

19 **reviews that we did at Jefferson-Pilot.**

20 Q. That document --

21 **A. That's correct.**

22 Q. -- was maintained by you in 2007 in a

23 file that relates back to some claims you

24 reviewed in 1997 at Jefferson-Pilot?

25 **A. It was kept on my computer. It had**

Page 12

1 **been transferred over when I moved from laptop**

2 **to laptop.**

3 Q. So that document there is actually a

4 electronic version of that document somewhere?

5 **A. Yes, there is.**

6 Q. Did you send that electronic version to

7 your attorney, Mr. Zahnd, or did you send him a

8 hand copy?

9 **A. Mr. Zahnd is not my attorney. He's a**

10 **co-worker.**

11 Q. At the time that was produced,

12 Mr. Zahnd wrote to me acting as your counsel,

13 right?

14 **A. I don't know that that's correct.**

15 Q. I'm not going to argue whether he's

16 your lawyer or not. Mr. Zahnd is the person

17 that sent that letter and document to me,

18 correct?

19 **A. That is correct.**

20 Q. Did he author this letter or did you

21 ghostwrite it?

22 **A. I did not ghostwrite it. I assumed he**

23 **authored it.**

24 Q. How did he come to possess the document

25 that he gave to me?

Page 13

1 **A. I gave it to him.**

2 Q. By hand or electronically?

3 **A. I believe I printed it out and gave it**

4 **to him by hand.**

5 Q. Do you still maintain the electronic

6 version of it?

7 **A. Yes, I do.**

8 Q. Do you know when it was created, the

9 document?

10 **A. No, I don't.**

11 Q. Did you go to Jefferson-Pilot in 1997

12 to do this review or was it earlier?

13 **A. I don't recall.**

14 Q. Can we conclude it's 1997 since you

15 asked for tax returns from '93 through '96?

16 **A. We can conclude it's after 1996. I**

17 **honestly don't recall beyond that.**

18 Q. If it were 1998 you would have

19 requested the '97 returns too, right?

20 **A. Possibly. It would depend on the facts**

21 **of the case and I just don't remember enough to**

22 **tell you. I can conclude it was after 1996.**

23 Q. And it would have been before sometime

24 in 1998 when you transferred responsibility for

25 the Jefferson-Pilot block of business to

Page 14

1 Mr. Dempsey?

2 **A. I don't recall specifically when that**
3 **transfer happened. But, yes, it would have been**
4 **before whenever the transfer happened.**

5 Q. The reserves you state in that
6 document, is that just ERC reserves for its
7 portion of the responsibility on the claim?

8 **A. I don't remember.**

9 Q. Can you tell from this document what
10 ERC's percentage of claim responsibility it was?

11 **A. It appears that there were two**
12 **policies, one of which was 67 percent ceded, one**
13 **that was 100 percent ceded.**

14 Q. And ceded for the jury means what?

15 **A. An insurance company can enter into a**
16 **relationship with a reinsurance company whereby**
17 **a portion of the risk is in effect insured by**
18 **the reinsurer. The reinsurer then reimburses**
19 **the cedent for that portion, whatever portion is**
20 **agreed amongst the companies. Ceded is the term**
21 **that's used to describe the transfer of that**
22 **portion to the reinsurer.**

23 Q. And does your record reflect what you
24 determined from your claim file review what the
25 period of the benefit was, benefit duration?

Page 15

1 **A. The document indicates lifetime. I**
2 **don't have independent recollection of that.**

3 Q. Would you have reviewed the policy to
4 come to that conclusion, the schedules to the
5 policy?

6 **A. Typically the answer to that would be**
7 **yes. I don't recall how the Jefferson-Pilot**
8 **files were organized. For the duration policy**
9 **it's also possible that there was a deck page in**
10 **the file as opposed to the whole policy. I**
11 **don't remember.**

12 Q. And what I will call it a To-Do List
13 items 1 through 7, is that a list of things that
14 you thought would be good or appropriate to do?

15 **A. Well, I don't necessarily agree that it**
16 **is a To-Do List. It is activities that when I**
17 **reviewed the file I thought would be useful in**
18 **terms of substantiating the information in the**
19 **file.**

20 Q. I call it a To-Do List. I was only
21 referring to 10ths. It's things that hadn't
22 been done, but you were recommending to be done
23 in the future, right?

24 **A. I don't recall.**

25 Q. Okay. At the bottom it says "Copy to

Page 16

1 DMS." Was this actually copied to DMS?

2 **A. I don't recall.**

3 Q. It was your intention to at least copy
4 it to DMS?

5 **A. The document would certainly indicate**
6 **that, but I don't have an independent**
7 **recollection.**

8 Q. Did you leave a copy with
9 Jefferson-Pilot?

10 **A. Yes. This would have been information**
11 **that was given to Jefferson-Pilot.**

12 Q. Are you mindful that there was a
13 consulting agreement between DMS and ERC in the
14 '90's?

15 **A. I am aware that that existed.**

16 Q. Have you ever seen one?

17 **A. No.**

18 Q. Did you ever make use of that
19 consulting agreement?

20 **A. I don't understand the question.**

21 Q. Did you ever direct claim files to DMS
22 for their review pursuant to the consulting
23 agreement in your capacity as claims counsel?

24 **A. I directed files to DMS for -- as DMS**
25 **assist the reinsured with looking at files.**

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1 **Whether it was pursuant to that consulting**
2 **agreement, I don't know.**

3 Q. Was that something you did hundreds of
4 times, dozens of times, couple times, rarely?

5 **A. I couldn't recall the specific number**
6 **of times.**

7 Q. Was it in the hundreds?

8 **A. I don't recall. That -- it seems like**
9 **hundreds would be a high number.**

10 Q. Did you direct that JP send the Kearney
11 file to DMS for its review?

12 **A. I don't recall. I would not have -- it**
13 **would be unlikely that I would have directed**
14 **them to do that.**

15 Q. Did you recommend?

16 **A. I don't recall.**

17 Q. Have you reviewed any other documents
18 other than what I have shown you as attached to
19 Exhibit 2?

20 **A. No, I have not.**

21 Q. Did you meet with Mr. Meagher and
22 Mr. Baty for several hours in preparation for
23 the deposition?

24 **A. No.**

25 Q. Did you meet with Mr. Meagher at all

Page 18

1 prior to the deposition today?
 2 **A. Yes, I did.**
 3 Q. Was that yesterday or just today?
 4 **A. It was today.**
 5 Q. Have you seen a privilege log that was
 6 produced in this lawsuit?
 7 **A. No, I have not.**
 8 Q. -- from ERC? Sir, we've marked as
 9 Exhibit 1 in Mr. Dempsey's deposition a
 10 privilege log that was provided to me. And I
 11 would ask that you -- have you seen one of these
 12 before? Far left hand column is a sequence of
 13 numbers listed numerically.
 14 **A. Okay.**
 15 Q. If you could turn to the page that
 16 contains the reference to page 1466.
 17 **A. Okay.**
 18 Q. Do you have an understanding of what
 19 "work product" means?
 20 **A. Yes, I do.**
 21 Q. Can you tell the jury what it means?
 22 **A. Work product is a form of**
 23 **attorney/client privilege where activities are**
 24 **undertaken at the request of an attorney.**
 25 Q. In anticipation of litigation?

Page 19

1 **A. In reasonable anticipation of potential**
 2 **litigation.**
 3 Q. Document 1466, can you tell the jury
 4 what the date is associated with that document?
 5 **A. The privilege log indicates 11-14,**
 6 **1996. I have -- I don't recall this document.**
 7 Q. But it indicates that you authored some
 8 document to a Mr. Roberson, right?
 9 **A. That's what the privilege log**
 10 **indicates, correct.**
 11 Q. You do know that Mr. Roberson was an
 12 individual in the claims area of
 13 Jefferson-Pilot?
 14 **A. I don't recall the name Roberson.**
 15 Q. And this suggest that on that date you
 16 issued some sort of a recommendation that was in
 17 anticipation of litigation on the Kearney claim,
 18 right?
 19 MR. MEAGHER: Objection to form.
 20 **A. It was in -- well, I don't recall.**
 21 Q. (By Mr. Roberts) I'm not asking if you
 22 recall. I'm just saying this entry here on this
 23 privilege log suggest that in November of '96
 24 you sent a memorandum to Roberson that was a
 25 recommendation on the Kearney claim in

Page 20

1 anticipation of litigation, correct?
 2 MR. MEAGHER: Objection to form.
 3 You can answer.
 4 **A. I can see in the summary that it**
 5 **indicates memorandum and in the subject**
 6 **recommendation. I don't recall beyond that.**
 7 Q. (By Mr. Roberts) And it suggest that
 8 the document is protected from disclosure under
 9 the work product doctrine, right?
 10 MR. MEAGHER: Objection to form.
 11 **A. It is in the privilege log.**
 12 Q. (By Mr. Roberts) Do you recall
 13 anticipating litigation against Mr. Kearney in
 14 1996?
 15 **A. No. I don't recall -- I don't recall**
 16 **anything about this claim to be perfectly**
 17 **honest.**
 18 Q. Can you turn to the entry for
 19 Document 316?
 20 **A. Okay.**
 21 Q. That suggest in May of '98 you had some
 22 attorney/client and work product communications
 23 regarding claim handling with a lawyer named
 24 Bill Ellis, right?
 25 **A. The log indicates that there was**

Page 21

1 **correspondence dated 5-5, 1998 from myself to**
 2 **Mr. Ellis.**
 3 Q. Actually the reverse from Mr. Ellis to
 4 you?
 5 **A. I'm sorry, excuse me.**
 6 Q. Do you have any reason to believe
 7 that's not accurate?
 8 **A. I don't recall this document.**
 9 Q. Do you recall any interaction with Mr.
 10 Ellis?
 11 **A. I know that we have used Mr. Ellis on a**
 12 **couple of cases on varies subjects. I don't**
 13 **recall this interaction.**
 14 Q. When would have been the last time
 15 prior to 2007 -- 2007 you received a subpoena.
 16 So prior to 2007, when would have been the last
 17 time you had any interaction of any nature with
 18 regard to Chris Kearney or his claim?
 19 **A. I don't recall. It would surprise me**
 20 **if it was after 1998.**
 21 Q. Do you recall with what frequency
 22 receiving documents regarding the Kearney claim
 23 from Jefferson-Pilot?
 24 **A. No, I don't.**
 25 Q. In the 1997 timeframe you don't know

Page 22

1 how many claims you had facilitated DMS
 2 reviewing?
 3 **A. I don't recall.**
 4 Q. You don't know if it's less than a
 5 handful or more than hundred?
 6 **A. The number hundred strikes me as high.**
 7 **Other than that I don't recall.**
 8 Q. Could it have been just a handful?
 9 **A. Probably was more than a handful.**
 10 Q. What directed you to make the decision
 11 to send a claim file to DMS for review?
 12 **A. Could be a variety of factors. It**
 13 **could relate to the staffing at the company that**
 14 **we were doing a claim audit at or had a**
 15 **relationship with. It could be indications in**
 16 **the file that there were -- that there was a**
 17 **need for further investigation that the primary**
 18 **company had not done. Could be a number of**
 19 **things.**
 20 Q. Jefferson-Pilot had its own claim
 21 department in '97/'98, right?
 22 **A. I recall them having their own claim**
 23 **department when I visited them. I can't be**
 24 **specific as to the '97 or '98 timeframe.**
 25 Q. We have marked as Exhibit 9 a July 8,

Page 23

1 '97 letter, Bates 502 from Shelton to DMS that
 2 refers to DMS for its review three files. Do
 3 you see that?
 4 **A. Yes.**
 5 Q. When you were in the process of
 6 reviewing, collecting documents pursuant to the
 7 subpoena you received, you came cross this
 8 document on Kearney, right?
 9 **A. Yes.**
 10 Q. And in that same file did you come
 11 across similar documents for Mr. Kahn and
 12 Mr. London?
 13 **MR. MEAGHER:** I'm going to
 14 object. Again, I believe that information on
 15 the identity of other claimants should be
 16 redacted. I made that clear in Mr. Dempsey's
 17 deposition. You now have read their names into
 18 the record in direct contradiction to my
 19 position on that. So I think that should be
 20 redacted from the transcript also and this
 21 record redacted.
 22 Q. (By Mr. Roberts) Sir, this is already
 23 a public record. It's attached to several
 24 pleadings in litigation.
 25 **A. I searched only for Christopher**

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1 **Kearney, so I don't know.**
 2 Q. You didn't stumble across a similar
 3 form for Mr. Kahn or Mr. London?
 4 **A. Again, I searched only for Mr. Kearney.**
 5 Q. You did an electronic search?
 6 **A. Yes.**
 7 Q. You did the word "Kearney" and the only
 8 hit was that particular document?
 9 **A. That's correct.**
 10 Q. And it was stored in a electronic file
 11 that relates back to your 1997 visit to North
 12 Carolina?
 13 **A. It relates back to a visit to North**
 14 **Carolina. I don't know the timeframe.**
 15 Q. Sitting here, do you recall whether you
 16 facilitated, recommended that these three claim
 17 files go to DMS for its review?
 18 **A. No, I don't.**
 19 Q. When you would go review a claim file
 20 at Jefferson-Pilot, tell me what would happen
 21 physically?
 22 **A. We would arrange with Jefferson-Pilot**
 23 **for dates that would be convenient for us to be**
 24 **at Jefferson-Pilot. We would produce a listing**
 25 **of files that we wanted to review. We would**

Page 25

1 **send that to Jefferson-Pilot. We would travel**
 2 **to Jefferson-Pilot. Jefferson-Pilot would**
 3 **produce the files and we would review them.**
 4 Q. The files in total?
 5 **A. I can't say that every file we**
 6 **requested was produced. Some would be in the**
 7 **process of payment or in use such that they were**
 8 **not available at the times that we were there.**
 9 Q. But you did review Mr. Kearney's claim
 10 because -- claim file because you created that
 11 document?
 12 **A. Yes. And I don't have a recollection**
 13 **of doing that. The document certainly indicates**
 14 **that I did.**
 15 Q. You've spoken the first person plural
 16 about these visits to North Carolina. Did other
 17 people accompany you?
 18 **A. Mr. Dempsey accompanied me on at least**
 19 **one visit. And I believe Bob Lainer**
 20 **accompanied me on one visit as well.**
 21 Q. And you would just split up the work
 22 loads when you got there?
 23 **A. We would look at -- we would look at**
 24 **different files, yes.**
 25 Q. Sir, I apologize for making you wait.

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1 We are concluded.

2 MR. MEAGHER: No questions.

3 MR. MARTIN: It is now 4:02. We
4 are going off the record.

5 MR. MEAGHER: Just on the record,
6 Mr. Roberts just told me, and I understand that
7 it came up one day I guess at the deposition
8 that Bill Ellis attended, that Mr. Kearney
9 suffered a heart attack. I'm just asking
10 whether are we still on as far as you know as
11 you sit here today, are we still on for his
12 deposition on June 20 of next week?

13 MR. ROBERTS: On the record, yes.
14 (Deposition concluded at 4:05 PM.)
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1 CERTIFICATE

2 I, Mary Lynn Cushing, a Certified
3 Shorthand Reporter for the State of Missouri, do
4 hereby certify:

5 That prior to being examined the
6 witness was by me duly sworn;

7 That said deposition was taken down by
8 me in shorthand at the time and place
9 hereinbefore stated and was thereafter reduced
10 to writing under my direction;

11 That I am not a relative or employee or
12 attorney or counsel of any of the parties, or a
13 relative or employee of such attorney or
14 counsel, or financially interested in the
15 action.

16 WITNESS my hand and seal this _____
17 day of _____, 2007.
18
19

20 MARY LYNN CUSHING, CSR, CCR No. 1077

21 FEES DUE METROPOLITAN COURT REPORTERS, INC. :

22 \$_____ ATTORNEY FOR PLAINTIFF

23 \$_____ ATTORNEY FOR DEFENDANT
24
25

Page 27

1
2
3
4
5
6 _____
7 DAVID NEWKIRK
8
9
10

11 Subscribed and Sworn to before
12 me this _____ day of _____, 2007.
13
14

15 _____
16 Notary Public
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19 County of _____
20 State of _____
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23 JEFFERSON PILOT vs. CHRISTOPHER KEARNEY
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3 June 28, 2007
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5 Mr. David Newkirk
6 c/o Mr. Bruce E. Baty
7 Stinson, Morrison, Hecker, LLP
8 1201 Walnut Street, Suite 2900
9 Kansas City, Missouri, 64106
10 RE: JEFFERSON-PILOT VS. CHRISTOPHER KEARNEY

11 Dear Mr. Newkirk:

12 Enclosed is your deposition, given in the
13 above-named matter, for your examination and
14 signing. You will also find a signature page
15 and an errata sheet for your convenience in
16 making any changes or corrections.
17 Pursuant to the law, any change in "form or
18 substance" of an answer shall be accompanied
19 with a statement of the reason given by you for
20 making such change.

21 Upon completion of your examination and reading,
22 please sign the enclosed signature page and
23 errata sheet and return them to this office in
24 the enclosed self-addressed envelope. If we
25 have not received the signed documents from you
within 30 days from the date of this letter, an
unsigned copy of your deposition will be filed.

Yours very truly,

METROPOLITAN COURT REPORTERS, INC.

By: MARY LYNN CUSHING, CSR, CCR No. 1077

1 ERRATA SHEET
2 RE: JEFFERSON-PILOT VS. CHRISTOPHER KEARNEY
3 DEPOSITION OF: DAVID NEWKIRK
4 PG/LN NO. CORRECTION REASON FOR CHANGE
5 _____
6 _____
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17 _____
18 _____ I certify that I have read my deposition
19 in the above case and I request that no changes
20 be made.
21 _____ I certify that I have read my deposition
22 in the above case and I request that the above
23 changes be made.
24 SIGNATURE OF DEPONENT: _____
25 DATED: _____

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